PUBLIC LAW REVIEW

Volume 28, Number 1

2017

COMMENTS

The "Rule" Against Subdelegation of Legislative Power: Is it as Relevant in the 21st Century as it was in the 20th? – *Stephen Argument* 3

Reverse Onus Provisions and Statements of Compatibility in the Courtroom – *Jeremy Gans* 8

The Statutory Implication of Reasonableness and the Scope of Wednesbury Unreasonableness – *Justice Chris Maxwell* 16

SPEECH

The Increasing Internationalisation of Australian Law – *Justin Gleeson SC*

Amongst the United States Supreme Court justices, Justice Stephen Breyer is the most outward-looking in his insistence that the law of that country must be open to international influences. This article, which is an edited version of the Patron's Lecture given to the Australian Academy of Law in October 2016, seeks to adapt Breyer's thesis to the Australian context. It identifies eight drivers which open Australian law to international influences: the terms of the Constitution adopted in 1900, treaty-making since then, the increase in international commerce, the attitude of judges and counsel, increasing exposure of the Commonwealth to international dispute resolution, the Commonwealth exposing the States and Territories to international law claims, international law claims repackaged domestically, and finally, renvoi from international or foreign law to domestic law. It concludes with suggestions for changes in legal training and practices to accommodate these international influences. 25

ARTICLES

Deliberation at the Founding: Deliberative Democracy as an Original Constitutional Value – *Ron Levy*, *Neomal Silva* and *Benjamin B Saunders*

This article examines whether Australia's constitutional founders intended that a deliberative form of democratic government should govern federally in Australia. Deliberative democratic ideals have long occupied a prominent place in democratic theory. However, they have seldom been brought to bear in a sustained way on historical questions about Australia's constitutional design. For constitutional scholars, democratic deliberation is now generally a forgotten element of the Australian constitutional system. We show here how the framers concerned themselves with democratic deliberation, including how precisely they envisaged deliberative democratic practices during the federation Conventions and within the new federation. Our focus is on the framers' understandings of deliberation within the institution of Parliament, and the subsidiary issues bearing on that question such as the relationship between Parliament and the executive and the role of political parties. Our research suggests that deliberative democracy should assume a prominent place alongside more widely acknowledged original constitutional values. 41

Is the Crown Expected to be a Model Litigant in New Zealand? – *Anthea Williams*

This article examines the use of the term "model litigant" in New Zealand jurisprudence, noting the inconsistency in how it has been applied against the Crown, and the lack of a broadly accepted understanding of what it requires. In 2013, the New Zealand Government issued the "Attorney-General's Values", but these are not yet widely known or applied. New Zealand should adopt an indigenous understanding of any such obligation rather than adopting existing Australian guidelines. There are various bases for holding the Crown to a higher standard of behaviour in civil litigation, some of which differ from possible Australian sources. The Crown's constitutional role as the "fountain of justice" is the most appropriate basis for founding such an expectation in New Zealand. The extent to which the obligation is enforceable should be determined by the Crown. The Crown is best placed to understand the political and cultural obligations at the heart of any issue of model litigant behaviour. 61

DEVELOPMENTS 86